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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,361	11/23/2001	Mark S. Pelak	MSP-2	5889

7590

03/29/2004

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EXAMINER
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BUMGARNER, MELBA N

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 03/29/2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/002,361

Applicant(s)

PELAK, MARK S.

Examiner

Melba Bumgarner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7, 8, and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerber (2,866,285) in view of Kwan (5,733,124). Gerber discloses dental prosthesis comprising an implant abutment 10 affixed at a lower end to a dental implant 2, having a threaded shaft (column 2 line 61) which is to be received in a threaded bore (column 2 line 62) formed in the dental implant; the abutment having an implant abutment axis; a concave groove 10a in the abutment extending substantially transverse to the axis, an O-ring 8 of elastic material stretched about the abutment and elastically retained in the groove, the O-ring having a cross-sectional diameter substantially greater than the depth of the groove such that outer portion of the O-ring projects from an outer axial surface of the abutment; and an appliance 4 having a retainer cavity including a retainer surface telescopically mateable onto the outer abutment surface, a complementary groove 7 in retainer surface shaped to closely match and receive the outer portion of the O-ring, the O-ring making a resilient retentive fit between the appliance and abutment. Gerber does not show the abutment of metal. It would have been an obvious matter of choice to one of ordinary skill in the art to have the abutment of metal as it is well known in the art in making dental implants and mating abutments of metal. However, Kwan teaches dental prosthesis comprising an implant abutment of metal (column 4 line 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the abutment of Gerber to be made of metal in order to have the abutment that has good strength, durability and machineability. As to claim 2, Gerber shows the abutment includes a tapered surface 10d (column 3 line 11). As to claim 3, Gerber shows the abutment is

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threadedly connected to the implant. As to claim 7, Gerber shows a concave circumferential groove in the abutment, a resilient retentive element between an appliance and the abutment, the retainer surface with an outwardly and downwardly taper, and the retainer surface with upwardly and inwardly extending tapered surface on the abutment. As to claim 8, Gerber shows the tapered surfaces are in frictional engagement similar to the claimed invention. As to claims 5, 12, and 13, Kwan shows the appliance 210 formed from metal (column 9 line 14) and processed into a denture 200 or partial denture 270 or a splinted bar 192.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerber in view of Kwan and further in view of Beaty et al. The modified prosthesis of Gerber and Kwan discloses a dental prosthesis that shows the limitations as described above; however, they do not show the appliance formed from porcelain fused to metal. Beaty et al. teach a dental prosthesis having an appliance formed from porcelain fused to metal (column 1 line 21). It would have been obvious to one of ordinary skill in the art to further modify the appliance to be formed of porcelain fused to metal in order to provide an appliance that will closely resemble a natural tooth in appearance in view of Beaty et al.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-8 and 10-16 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dalise (4,193,194) is cited to show the state of the art with respect to a dental prosthesis.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

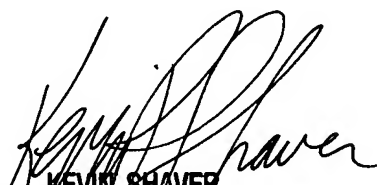
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 703-305-0740. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Melba Bumgarner  
Patent Examiner



KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700